

PT 98-41

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**INTERNATIONAL DELIVERANCE
CHURCH,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 93-16-1314

Real Estate Exemption

For 1993 Tax Year

P.I.N.: 25-16-220-001

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This proceeding raises the issue of whether Cook County Parcel Index Number 25-16-220-001 (hereinafter the “subject property” or “subject parcel”), should be exempt from 1993 property taxes under section 19.2 of the Revenue Act of 1939, which exempts property used for religious purposes. 35 ILCS 205/19.2.¹

This controversy arose as follows:

¹ In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable provisions are those found in the Revenue Act of 1939 (35 ILCS 205/1 *et seq.*).

In January 1994, International Deliverance Church (hereinafter “applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”) seeking exemption for the subject property. Dept. Group Ex. No. 1. The Board reviewed the applicant’s complaint and on May 25, 1994, recommended that an exemption be granted for that portion of the subject parcel which contained the church building. However, the Board recommended that no exemption be granted for that portion of the subject parcel containing a building located adjacent to the church building. On April 20, 1995, the Illinois Department of Revenue (hereinafter the “Department”) denied exemption for the entire subject parcel noting that the applicant failed to provide adequate documentation. The applicant filed a timely appeal. On May 11, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the entire subject parcel be granted an exemption for the 1993 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Gr. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was not entitled to an exemption because the applicant failed to provide adequate documentation.
2. The applicant is organized as a corporation under the General Not for Profit Corporation Act of 1986. Applicant’s Articles of Incorporation state that it was organized, *inter alia*, to promulgate the Gospel of Jesus Christ. App. Ex. No. 1.
3. Applicant’s by-laws provide that its purposes are:
 - (a) to preach and interpret the Bible and to prophesy its meaning;
 - (b) to teach the Bible;
 - (c) to practice the art of religious healing; and
 - (d) to visit the sick and give spiritual guidance to the needy.

App. Ex. No. 2.

4. Applicant acquired title to the subject property via a warranty deed dated September 22, 1972. App. Ex. No. 3
5. The subject property is located at 10643 South Perry Avenue in Chicago. Dept. Gr. Ex. No. 1.
6. The subject parcel is improved with a two buildings. Tr. p. 11.
7. The first building is the church itself (hereinafter the “church building”), which is approximately 5,000 square feet in size. In 1993 the church building was used primarily for traditional religious activities such as: Sunday, Tuesday, and Friday worship services; Sunday school classes; religious revivals; and pastoral counseling. The church building was also frequently used to distribute free food to the needy. Tr. pp. 11-23.
8. The second building is a two-story brick house approximately 1,350 square feet in size. In 1993 the house was used primarily for feeding, housing, and ministering to homeless people and drug addicts. Tr. pp. 11, 24, 31-32; App. Ex. No. 6.
9. The applicant’s homeless ministry provided housing for approximately 16 homeless or drug addicted people at a time. There would be daily prayer services and scripture readings. The applicant’s goal was to feed and clothe the homeless, to help them find jobs, and to get them to accept the Lord as their savior. Tr. pp. 27-28, 31-32.
10. Occasionally, five or six Christian missionaries would come stay at the house where they would receive religious training. Tr. pp. 30-31.

CONCLUSIONS OF LAW

An examination of the record establishes that the applicant has demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to warrant a 1993 property tax exemption for the entirety of parcel 25-16-220-001. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). Since that time however, statutory changes have eliminated the ownership requirement. *Id.* Thus, today the main prerequisite for a religious

property tax exemption, in cases not involving parsonages,² is that the property in question be “used exclusively for religious purposes.” 35 ILCS 205/19.2. The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Dep’t of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep’t of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132, 136-137 (1911) our supreme court stated that “a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.” It is clear that the church building in the case at hand satisfies these requirements since it was primarily used for public worship, Sunday schools, and religious instruction. Thus, the church building itself is clearly entitled to exemption as property used exclusively for religious purposes.

Less clear is whether the house located next to the church building should be exempt. Some of the uncertainty is caused by the fact that throughout the hearing the house was referred to as “the parsonage” when the evidence clearly shows that the house does not meet the statutory requirements for a parsonage exemption because there was no evidence that the house served as a permanent home for the church pastor or any similar church official.³ (35 ILCS 5/15-40) Rather, the primary use of the house was for feeding, housing, and ministering to homeless people and drug addicts. Thus, the appropriate inquiry is not whether the house qualified for

² In addition to religious use, an applicant seeking exemption for a parsonage must also establish that the parsonage was owned by a religious institution. Immanuel Evangelical Lutheran Church v. Dep’t of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

exemption as a parsonage, but rather whether the house qualified for exemption as property used primarily for religious purposes.

As previously noted, our supreme court stated that “a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.” See McCullough, supra at 136-137. However, the court subsequently clarified that statement and noted that it was not intended to be “inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use.” People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922).

Illinois courts have never set forth an all-inclusive definition or specification of what constitutes a religious purpose. Evangelical Teacher Training Ass’n v. Novak, 118 Ill. App. 3d 21 (2nd Dist. 1983). However, there appears to be a trend in the case law towards recognizing that charitable and religious activities are often interrelated. *Id.* Moreover, feeding and sheltering the needy has long been recognized as a central religious tenet. Stuart Circle Parish v. Board of Zoning Appeals, 946 F. Supp. 1225, 1236 (E.D.Va. 1996) (citing the Bible at Matthew 25:35-46). Thus, in the case at

³ There was testimony that the house was occasionally used by Christian missionaries undergoing religious training. However, the use by such missionaries was merely incidental as does not, in and of itself, provide a basis for exemption.

hand, applicant's use of the house to feed, shelter, and minister to the homeless and addicted constitutes a religious activity. Accordingly, the house should qualify for exemption as property used primarily for religious purposes.

As a final matter, I note that applicant's request for a formal hearing requested that applicant's 1984 to 1996 taxes be exempted retroactively. However, it is well established that a decision adjudicating the tax status of property for a particular year is not *res judicata* as to the status of the same property in other tax years, even where the ownership and the use of the property remains the same. See Jackson Park Yacht Club v. Illinois Dep't of Local Gov't Affairs, 93 Ill. App. 3d 542, 546, (1st Dist. 1981).

For the reasons stated above, I recommend that the entirety of Cook County Parcel Index Number 25-16-220-001 be exempted from 1993 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge